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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/774,393      | 01/31/2001  | Joseph L. Torres     | 00-P-24787          | 3083             |

39682 7590 09/27/2005

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EXAMINER

NAJARIAN, LENA

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3626

DATE MAILED: 09/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |  |                     |  |
|------------------------------|------------------------|--|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> |  | <b>Applicant(s)</b> |  |
|                              | 09/774,393             |  | TORRES ET AL.       |  |
|                              | <b>Examiner</b>        |  | <b>Art Unit</b>     |  |
|                              | Lena Najarian          |  | 3626                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 July 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-19 and 43-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-19 and 43-54 is/are rejected.
- 7) ☒ Claim(s) 10 and 48 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

*[Handwritten signature]*

## **DETAILED ACTION**

### ***Notice to Applicant***

1. This communication is in response to the amendment filed 7/1/05. Claims 10-19 and 43-54 are pending. Claims 10-19 and 43-54 have been amended. Claims 1-9, 20-42, and 55-60 have been cancelled.

### ***Drawings***

2. The objection to the drawings is hereby withdrawn due to the amendment filed 7/1/05.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: item 8' of Fig. 4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The objection above was included in the previous Office Action. The Examiner suggests that Applicant substitute "8'" with "80'" in Fig. 4 to match the specification.

### ***Specification***

4. The amendment filed 7/1/05 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The newly added recitation of the physician that distributes said plurality of prepaid healthcare patient identifiers receives payment for the prepaid healthcare consultations associated with said plurality of prepaid healthcare patient identifiers *prior* to providing the prepaid healthcare consultations within claims 10, 43, 48, and 51 appears to constitute new matter.

In particular, Applicant does not point to, nor was the Examiner able to find, any support for this newly added language within the specification as originally filed. As such, Applicant is respectfully requested to clarify the above issues and to specifically point out support for the newly added limitations in the originally filed specification and claims.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Objections***

5. Claims 10 and 48 are objected to because of the following informalities: there appears to be a typographical error in line 23 of claim 10 ("network to physicians"

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should be changed to "network of physicians") and in line 11 of claim 48 ("plurality prepaid" should be changed to "plurality of prepaid"). Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 10, 43, 48, and 51 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

(A) Independent claims 10, 43, 48, and 51 recite limitations that are new matter, as discussed above, and are therefore rejected.

8. The rejection of claims 43-47 under 35 U.S.C. 112, second paragraph, is hereby withdrawn due to the amendment filed 7/1/05.

***Claim Rejections - 35 USC § 101***

9. Claims 10-15 and 43-54 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

(A) In the present case, claims 10-15 only recite an abstract idea. The recited steps of exemplary claim 10 of merely establishing a plurality of prepaid healthcare patient identifiers and a network of physicians and having the patient pre-select a number of prepaid healthcare consultations does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention produces a plurality of prepaid healthcare patient identifiers associated with one patient and having a preselected number of prepaid healthcare consultations. Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claim 10 is deemed to be directed to non-statutory subject matter.

(B) In the present case, claims 43-47 only recite an abstract idea. The recited steps of exemplary claim 43 of merely distributing a plurality of prepaid healthcare patient identifiers to a plurality of patients and providing payment to the respective physician in the network of physicians does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention produces a plurality of prepaid healthcare consultations to the plurality of members enrolled in the prepaid healthcare service program. Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claim 43 is deemed to be directed to non-statutory subject matter.

(C) In the present case, claims 48-50 only recite an abstract idea. The recited steps of exemplary claim 48 of merely distributing a plurality of prepaid healthcare patient identifiers having a plurality of prepaid healthcare consultations does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention produces a plurality of prepaid healthcare patient identifiers. Although the recited process produces a useful, concrete, and tangible result, since the claimed

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invention, as a whole, is not within the technological arts as explained above, claim 48 is deemed to be directed to non-statutory subject matter.

(D) In the present case, claims 51-54 only recite an abstract idea. The recited steps of exemplary claim 51 of merely purchasing at least one prepaid healthcare patient identifier and distributing the at least one prepaid healthcare identifier does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, the claimed invention produces at least one prepaid healthcare patient identifier having a preselected number of prepaid healthcare consultations associated with it. Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claim 51 is deemed to be directed to non-statutory subject matter.

The rejection above was included in the previous Office Action.

### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.



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**NOTE:** The following rejections assume that the subject matter added in the 7/1/05 amendment are NOT new matter, and are provided hereinbelow for Applicant's consideration, on the condition that Applicant properly traverses the new matter objections and rejections made in sections 4-6 above in the next communication sent in response to the present Office Action.

11. Claims 10-11, 43-44, 48-49, and 51 are rejected under 103(a) as being unpatentable over Conklin ("Debit-Card Style Health Services Coming to Town Prepaid Medical Services Offered In State by Columbia Chiropractic") in view of <http://wholepersonhealth.com> ("Whole Person: A Holistic Approach to Well-being"). (A) Claim 10 has been amended to now recite a network of physicians comprising a plurality of physicians "that provide healthcare consultations to the respective plurality of patients that possess the respective plurality of prepaid healthcare patient identifiers, each of the plurality of physicians" accepting "said" plurality of prepaid healthcare patient identifiers "to provide at least one of the" preselected number of prepaid healthcare consultations associated "with one of the respective plurality of prepaid healthcare identifiers" taking place between one of the plurality of patients and one of the plurality of physicians. The Examiner respectfully submits that Conklin discloses at para. 3, an individual prepaying for a certain number of visits and the cardholder going to a participating doctor and presenting the card. As such, it is readily apparent that there is a plurality of physicians that provide healthcare consultations to patients that possess the prepaid card.

In addition, claim 10 has been amended to now recite "said plurality of prepaid healthcare patient identifiers being distributed by the plurality of physicians in the network to physicians so that the physician that distributes said plurality of prepaid healthcare patient identifiers receives payment for the prepaid healthcare consultations associated with said plurality of prepaid healthcare patient identifiers prior to providing the prepaid healthcare consultations." As per these features, Conklin does not disclose said plurality of prepaid healthcare patient identifiers being distributed by the plurality of physicians in the network to physicians so that the physician that distributes said plurality of prepaid healthcare patient identifiers receives payment for the prepaid healthcare consultations associated with said plurality of prepaid healthcare patient identifiers prior to providing the prepaid healthcare consultations.

However, <http://wholepersonhealth.com> discloses the use of gift certificates for holistic medical services. As such, it is readily apparent that the health providers are being paid prior to providing the prepaid consultation.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of <http://wholepersonhealth.com> within Conklin. The motivation for doing so would have been to eliminate the time health professionals wait for reimbursement.

The remainder of claim 10 is rejected for the same reasons given in the prior Office Action, and incorporated herein.

(B) The amendments to claims 11, 44, and 49 appear to have been made to merely correct minor typographical or grammatical errors (i.e., removing dashes, repetitive

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language, and re-arranging the order of claim elements so that the language of the claim is smoother and more consistent), and/or to remove means-plus-function language, but otherwise does not affect the scope and breadth of the claims as originally presented and/or in the manner in which the claims were interpreted by the Examiner when applying prior art within the previous Office Action.

As such, the recited claimed features are rejected for the same reasons given in the prior Office Action, and incorporated herein.

(C) Claim 43 has been amended to now recite "providing payment to the respective physician in the network of physicians that distributes the respective prepaid healthcare patient identifier upon distribution of the prepaid healthcare patient identifier so that the respective physician that distributes the respective prepaid healthcare patient identifier is provided payment prior to providing the prepaid healthcare consultation." As per these features, Conklin does not disclose providing payment to the respective physician in the network of physicians that distributes the respective prepaid healthcare patient identifier upon distribution of the prepaid healthcare patient identifier so that the respective physician that distributes the respective prepaid healthcare patient identifier is provided payment prior to providing the prepaid healthcare consultation.

However, <http://wholepersonhealth.com> discloses the use of gift certificates for holistic medical services. As such, it is readily apparent that the health providers are being paid prior to providing the prepaid consultation.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of <http://wholepersonhealth.com> within Conklin.

The motivation for doing so would have been to eliminate the time health professionals wait for reimbursement.

The remainder of claim 43 is rejected for the same reasons given in the prior Office Action, and incorporated herein.

(D) Claim 48 has been amended to now recite “so that the first individual physician receives payment for the prepaid healthcare consultations prior to providing the plurality prepaid healthcare consultations.” As per these features, Conklin does not disclose so that the first individual physician receives payment for the prepaid healthcare consultations prior to providing the plurality prepaid healthcare consultations.

However, <http://wholepersonhealth.com> discloses the use of gift certificates for holistic medical services. As such, it is readily apparent that the health providers are being paid prior to providing the prepaid consultation.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of <http://wholepersonhealth.com> within Conklin. The motivation for doing so would have been to eliminate the time health professionals wait for reimbursement.

The remainder of claim 48 is rejected for the same reasons given in the prior Office Action, and incorporated herein.

(E) Claim 51 has been amended to now recite “the healthcare provider distributing the at least one prepaid healthcare patient identifier upon receipt of a predetermined payment, and the healthcare provider receiving the predetermined payment prior to providing the prepaid healthcare consultations.” As per these features, Conklin does

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not disclose the healthcare provider distributing the at least one prepaid healthcare patient identifier upon receipt of a predetermined payment, and the healthcare provider receiving the predetermined payment prior to providing the prepaid healthcare consultations.

However, <http://wholepersonhealth.com> discloses the use of gift certificates for holistic medical services. As such, it is readily apparent that the health providers are being paid prior to providing the prepaid consultation.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of <http://wholepersonhealth.com> within Conklin. The motivation for doing so would have been to eliminate the time health professionals wait for reimbursement.

The remainder of claim 51 is rejected for the same reasons given in the prior Office Action, and incorporated herein.

12. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conklin ("Debit-Card Style Health Services Coming to Town Prepaid Medical Services Offered In State by Columbia Chiropractic") in view of <http://wholepersonhealth.com> ("Whole Person: A Holistic Approach to Well-being"), as applied to claims 10-11 above and further in view of Ushikubo (4,767,917).

(A) The amendments to claims 12 and 13 appear to have been made to merely correct minor typographical or grammatical errors (i.e., removing dashes, repetitive language,

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and re-arranging the order of claim elements so that the language of the claim is smoother and more consistent), and/or to remove means-plus-function language, but otherwise does not affect the scope and breadth of the claims as originally presented and/or in the manner in which the claims were interpreted by the Examiner when applying prior art within the previous Office Action.

As such, the recited claimed features are rejected for the same reasons given in the prior Office Action, and incorporated herein.

13. Claims 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conklin ("Debit-Card Style Health Services Coming to Town Prepaid Medical Services Offered In State by Columbia Chiropractic") in view of <http://wholepersonhealth.com> ("Whole Person: A Holistic Approach to Well-being") and in view of Ushikubo (4,767,917), as applied to claims 10-13 above, and further in view of Dorf (6,000,608).

(A) The amendments to claims 14-19 appear to have been made to merely correct minor typographical or grammatical errors (i.e., removing dashes, repetitive language, and re-arranging the order of claim elements so that the language of the claim is smoother and more consistent), and/or to remove means-plus-function language, but otherwise does not affect the scope and breadth of the claims as originally presented and/or in the manner in which the claims were interpreted by the Examiner when applying prior art within the previous Office Action.

As such, the recited claimed features are rejected for the same reasons given in the prior Office Action, and incorporated herein.

14. Claims 45, 50, and 52-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conklin ("Debit-Card Style Health Services Coming to Town Prepaid Medical Services Offered In State by Columbia Chiropractic") in view of <http://wholepersonhealth.com> ("Whole Person: A Holistic Approach to Well-being"), as applied to claims 43-44, 48-49, and 51 above, and in view of Link, II et al. (US 6,526,273 B1).

(A) The amendments to claims 45, 50, and 52-54 appear to have been made to merely correct minor typographical or grammatical errors (i.e., removing dashes, repetitive language, and re-arranging the order of claim elements so that the language of the claim is smoother and more consistent), and/or to remove means-plus-function language, but otherwise does not affect the scope and breadth of the claims as originally presented and/or in the manner in which the claims were interpreted by the Examiner when applying prior art within the previous Office Action.

As such, the recited claimed features are rejected for the same reasons given in the prior Office Action, and incorporated herein.

15. Claims 46-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conklin ("Debit-Card Style Health Services Coming to Town Prepaid Medical Services Offered In State by Columbia Chiropractic") in view of <http://wholepersonhealth.com> ("Whole Person: A Holistic Approach to Well-being") and in view of Link, II et al. (US

6,526,273 B1), as applied to claims 43-45 above, and further in view of Dorf (6,000,608).

(A) The amendments to claims 46 and 47 appear to have been made to merely correct minor typographical or grammatical errors (i.e., removing dashes, repetitive language, and re-arranging the order of claim elements so that the language of the claim is smoother and more consistent), but otherwise does not affect the scope and breadth of the claims as originally presented and/or in the manner in which the claims were interpreted by the Examiner when applying prior art within the previous Office Action.

### ***Response to Arguments***

16. Applicant's arguments with respect to claims 10, 43, 48, and 51 have been considered but are moot in view of the new ground(s) of rejection.

17. Applicant's arguments filed 7/1/05 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed 7/1/05.

(1) Applicant argues that the present invention, as recited in the amended claims, do apply, involve, use, and advance the technological arts to promote the process of science and the useful arts and that Applicants respectfully submit that the present invention is useful and meets the criteria set forth in 35 U.S.C. 101.

(A) As per the first argument, the basis of the 101 rejection is set forth in a two-prong test of:



(1) whether the invention is within the technological arts; and

(2) whether the invention produces a useful, concrete, and tangible result.

The Examiner agrees that the recited process produces a useful, concrete, and tangible result (i.e., a practical application), however, since the claimed invention, as a whole, is not within the technological arts as explained in the 101 rejection above (i.e., since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper), claims 10-15 and 43-54 are deemed to be directed to non-statutory subject matter.

### ***Conclusion***

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied prior art teaches an all purpose gift certificate (KR 2001026339 A); a method of payment for a healthcare service (US 2002/0010594 A1); a healthcare payment, reporting and data processing system and method (US 2002/0062224 A1); an online payer authentication service (US 2002/0111919 A1); and a method of administering a health plan (US 2002/0111826 A1).

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lena Najarian whose telephone number is 571-272-7072. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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